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No. 00-480

IN THE

Supreme Court of the United States

OCTOBER TERM, 2000

AGRIBANK, FCB,
Petitioner,

v.

MARK A. RAMSDEN, ET AL,
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITIONER'S REPLY BRIEF

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Statement Of The Case

Respondents' brief requires a brief addition to the statement of the case. First, they suggest that this Petition is premature, because the "identical issue" is pending before the Wisconsin Court of Appeals. Br. at 1-2.[1] As Respondents recognize, that proceeding has been stayed pending disposition of this Petition. Should the Wisconsin Court of Appeals grant leave to appeal, the issue before it will be the res judicata effect of the federal judgment. This Petition presents the very different issue of whether a federal district court abuses its discretion by enjoining relitigation after a state judge has issued an interlocutory order denying the res judicata defense.

Second, Respondents claim that the state ruling on AgriBank's motion for summary judgment is a final judgment for purposes of the Full Faith and Credit Act. Br. at 1. They made no such argument to District Court, App. A-16, and both the District Court and the Court of Appeals found that the summary judgment was not final. App. A-16; A-24.

Argument

I. The Court Of Appeals' Opinion Directly Conflicts With This Court's Holding In Parsons II.

As AgriBank explained in its Petition, the opinion below directly contradicts this Court's holding in *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518

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[1] Rule 809.50 of the Wisconsin Rules of Appellate Procedure allows a party to seek leave for immediate appellate review of an interlocutory order, just as does 28 U.S.C. § 1292(b). It rests in the appellate court's sound discretion whether to accept the appeal.

(1986) (*Parsons II*). The two cases occupy identical procedural postures. In each, the state court issued an interlocutory ruling rejecting the res judicata defense. The opinion below holds that it is an abuse of discretion for a federal district court to enjoin relitigation in these circumstances, absent extraordinary circumstances. App. A-28. *Parsons II* directed the District Court to exercise its discretion under "general principles of equity, comity, and federalism." 474 U.S. at 526.

Respondents' brief makes only a feeble effort to disguise the conflict. They assert that the state court ruling was "final for res judicata purposes, but not final for Full Faith and Credit purposes." Br. at 3. This is a meaningless distinction. The state court in *Parsons* had expressly rejected the res judicata defense. If that were a final judgment, *Parsons II* held it was entitled to full faith and credit. If it were not, the District Court would be "in the best position to decide the propriety of a federal-court injunction." 474 U.S. at 526.

Respondents argue that a federal court must consider equity and comity concerns in issuing an injunction under the relitigation exception. Br. at 4. AgriBank has never argued otherwise. Its point is that *Parsons II* gives the district courts discretion to weigh such considerations and the opinion below does not. That is why it directly conflicts with *Parsons II*.

II. The Court Of Appeals' Opinion Directly Conflicts With The Holdings Of The Eighth And Eleventh Circuits Applying Parsons II.

AgriBank's Petition explained that, on remand, the District Court in *Parsons* found that the state court order was not final and exercised its discretion to enjoin relitigation. The Eleventh Circuit held that this decree

was within "the bounds of the district court's discretion." *First Alabama Bank v. Parsons Steel, Inc.*, 825 F.2d 1475, 1486 (11th Cir. 1987), *cert. denied*, 484 U.S. 1060 (1988) (*Parsons III*). AgriBank also explained that the reasoning of the Eleventh Circuit in *Parsons III* is just as irreconcilable with the opinion below as the result. The opinion below explicitly acknowledged that *Parsons III* reached a diametrically opposite result. App. A-26.

Respondents again make but a feeble effort to disguise the conflict. For example, Respondents claim that the pending "appeal" in state court must make the judgment final, because – under Alabama law – an appeal automatically makes the judgment final. As previously explained, Wisconsin allows discretionary appellate review of interlocutory orders. In any event, this distinction does not avoid the conflict: the opinion below decided the case on the express finding that, as in *Parsons III*, the state court ruling on res judicata was not a final judgment. App. A-24-25.

Respondents repeatedly argue that injunctions are discretionary rather than mandatory. Br. at 5; 6-7; 8. That discretion belongs to the district courts – not the courts of appeal. *Parsons III* held that the District Court did not abuse its discretion in enjoining relitigation, even though the state court had expressly rejected the res judicata defense. The opinion below holds that this is an abuse of discretion.

Respondents claim that *Parsons III* is factually distinguishable, because the District Court found that the plaintiff had acted in bad faith. *Parsons III* expressly held that it "need not reach" that issue, because the injunction was otherwise within the District Court's

discretion. 825 F.2d at 1482. The circuit conflict remains absolutely direct.

Respondents' efforts to distinguish *In re SDDS, Inc.*, 97 F.3d 1030 (8th Cir. 1996), are equally unavailing. For example, they claim that the state court in *SDDS* did not rule on the res judicata defense. Br. at 9. But it had ruled on the merits of the case and the propriety of that ruling was on appeal to the South Dakota Supreme Court. 97 F.3d at 1034. An injunction prohibiting the State from defending its summary judgment in its own Supreme Court would seem to be at least as intrusive as an injunction issued after a state trial court issues an interlocutory order rejecting a res judicata defense. Yet the Eighth Circuit held it was an abuse of discretion to refuse an injunction. That holding is irreconcilable with the opinion below.

Respondents claim that federal courts should resolve any doubt about the propriety of an injunction in favor of deference to the states. Br. at 10. That argument merely underscores the necessity of this Court's review, since the Eighth and Eleventh Circuits strike the balance so differently than do the Seventh and D.C. Circuits.

III. The Deference Due To A Non-Final State Court Ruling On The Res Judicata Effect Of A Federal Judgment Raises Important Federalism Issues.

AgriBank's Petition also explained that this case raises important concerns over both federalism and separation of powers. Congress has expressly concluded that the federal interest in finality outweighs comity concerns, and the judge-made doctrine of *Younger*

v. Harris, 401 U.S. 37 (1971) cannot override Congress' judgment when, as here, the state is merely adjudicating private disputes. The opinion below creates a strong incentive to assume in all cases that state courts cannot be trusted to follow federal law – a considerably more insulting result than an occasional federal injunction after a state court has refused to enforce a federal judgment. Finally, comity is a two-way street. State courts are obliged to follow controlling federal law even when they disagree with it – not to decide that this Court's opinions are unfair.

Respondents have nothing to say about these issues. Instead, they claim that injunctions are discretionary and that this Court need not "formulate a new rule of law for the particular facts of this case." Br. at 13. Again, this argument merely underscores the importance of immediate review. The opinion below did not reverse the injunction based on some esoteric fact unique to this case. It reversed *solely* because it concluded that *Younger* prohibited a federal court from enjoining relitigation after the state court had ruled on the res judicata issue. That rationale creates the federalism and separation of powers issues that require this Court's review.

Conclusion

For these reasons, AgriBank respectfully prays that the Court grant the petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully Submitted,

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